

compliance with instructions in the OPM Operating Manual, FEDERAL WORKFORCE REPORTING SYSTEMS, for sale by the U.S. Government Printing Office, Superintendent of Documents;

(f) Maintain and submit such records as OPM may require; and

(g) Take any action required by OPM to ensure conformance with applicable law, regulation, and OPM policy.

#### § 430.210 OPM responsibilities.

(a) OPM shall review and approve an agency's performance appraisal system(s).

(b) OPM may evaluate the operation and application of an agency's performance appraisal system(s) and program(s).

(c) If OPM determines that an appraisal system or program does not meet the requirements of applicable law, regulation, or OPM policy, it shall direct the agency to implement an appropriate system or program or to take other corrective action.

### Subpart C—Managing Senior Executive Performance

SOURCE: 65 FR 60842, Oct. 13, 2000, unless otherwise noted.

#### § 430.301 General.

(a) *Statutory authority.* Chapter 43 of title 5, United States Code, provides for performance management for the Senior Executive Service (SES), the establishment of SES performance appraisal systems, and appraisal of senior executive performance. This subpart prescribes regulations for managing SES performance to implement the statutory provisions at 5 U.S.C. 4311–4315.

(b) *Purpose.* The regulations in this subpart require agencies to establish performance management systems that hold senior executives accountable for their individual and organizational performance in order to improve the overall performance of Government by—

(1) Expecting excellence in senior executive performance;

(2) Linking performance management with the results-oriented goals of the Government Performance and Results Act of 1993;

(3) Setting and communicating individual and organizational goals and expectations;

(4) Systematically appraising senior executive performance using measures that balance organizational results with customer, employee, or other perspectives; and

(5) Using performance results as a basis for pay, awards, development, retention, removal, and other personnel decisions.

#### § 430.302 Coverage.

(a) This subpart applies to all senior executives covered by subchapter II of chapter 31 of title 5, United States Code.

(b) This subpart applies to agencies identified in section 3132(a)(1) of title 5, United States Code.

#### § 430.303 Definitions.

Terms used in this subpart are defined as follows:

*Appointing authority* means the department or agency head, or other official with authority to make appointments in the Senior Executive Service.

*Appraisal period* means the established period of time for which a senior executive's performance will be appraised and rated.

*Balanced measures* means an approach to performance measurement that balances organizational results with the perspectives of distinct groups, including customers and employees.

*Critical element* means a key component of an executive's work that contributes to organizational goals and results and is so important that unsatisfactory performance of the element would make the executive's overall job performance unsatisfactory.

*Other performance elements* means components of an executive's work that do not meet the definition of a critical element, but may be important enough to factor into the executive's performance appraisal.

*Performance* means the accomplishment of the work described in the senior executive's performance plan.

*Performance appraisal* means the review and evaluation of a senior executive's performance against performance elements and requirements.

*Performance management system* means the framework of policies and practices that an agency establishes under subchapter II of chapter 43 of title 5, United States Code, and this subpart, for planning, monitoring, developing, evaluating, and rewarding both individual and organizational performance and for using resulting performance information in making personnel decisions.

*Performance requirement* means a statement of the performance expected for a critical element.

*Progress review* means a review of the senior executive's progress in meeting the performance requirements. A progress review is not a performance rating.

*Ratings:* (1) *Initial summary rating* means an overall rating level the supervisor derives from appraising the senior executive's performance during the appraisal period and forwards to the Performance Review Board.

(2) *Annual summary rating* means the overall rating level that an appointing authority assigns at the end of the appraisal period after considering a Performance Review Board's recommendations. This is the official rating.

*Senior executive performance plan* means the written summary of work the senior executive is expected to accomplish during the appraisal period and the requirements against which performance will be evaluated. The plan addresses all critical elements and any other performance elements established for the senior executive.

*Strategic planning initiatives* means agency strategic plans, annual performance plans, organizational workplans, and other related initiatives.

**§ 430.304 SES performance management systems.**

(a) To encourage excellence in senior executive performance, each agency must develop and administer one or more performance management systems for its senior executives.

(b) Performance management systems must provide for:

(1) Planning and communicating performance elements and requirements that are linked with strategic planning initiatives;

(2) Consulting with senior executives on the development of performance elements and requirements;

(3) Monitoring progress in accomplishing elements and requirements;

(4) At least annually, appraising each senior executive's performance against requirements using measures that balance organizational results with customer and employee perspectives; and

(5) Using performance information to adjust pay, reward, reassign, develop, and remove senior executives or make other personnel decisions.

(c) *Additional system requirements—*(1) *Appraisal period.* Each agency must establish an official performance appraisal period for which an annual summary rating must be prepared.

(i) There must be a minimum appraisal period of at least 90 days.

(ii) An agency may end the appraisal period any time after the minimum appraisal period is completed, if there is an adequate basis on which to appraise and rate the senior executive's performance.

(iii) An agency may not appraise and rate a career appointee's performance within 120 days after the beginning of a new President's term of office.

(2) *Summary performance levels.* Each performance management system must have at least three summary performance levels: one or more fully successful levels, a minimally satisfactory level, and an unsatisfactory level.

(3) *Method for deriving summary ratings.* Agencies must develop a method for deriving summary ratings from appraisals of performance against performance requirements. The method must ensure that only those employees whose performance exceeds normal expectations are rated at levels above fully successful. An agency may not prescribe a forced distribution of rating levels for senior executives.

**§ 430.305 Planning and communicating performance.**

(a) Each senior executive must have a performance plan that describes the individual and organizational expectations for the appraisal period and sets the requirements against which performance will be evaluated. Supervisors must develop performance plans in consultation with senior executives

and communicate the plans to them on or before the beginning of the appraisal period.

(b) Senior executive performance plan requirements:

(1) *Critical elements.* At a minimum, plans must describe the critical elements of the senior executive's work and any other relevant performance elements. Elements must reflect individual and organizational performance.

(2) *Performance requirements.* At a minimum, plans must describe the level of performance expected for fully successful performance of the executive's work. These are the standards against which the senior executive's performance will be appraised.

(3) *Link with strategic planning initiatives.* Critical elements and performance requirements for each senior executive must be consistent with the goals and performance expectations in the agency's strategic planning initiatives.

#### § 430.306 Monitoring performance.

(a) Supervisors must monitor each senior executive's performance during the appraisal period and provide feedback to the senior executive on progress in accomplishing the performance elements and requirements described in the performance plan. Supervisors must provide advice and assistance to senior executives on how to improve their performance.

(b) Supervisors must hold a progress review for each senior executive at least once during the appraisal period. At a minimum, senior executives must be informed about how well they are performing against performance requirements.

#### § 430.307 Appraising performance.

(a) *Annual appraisals.* Agencies must appraise each senior executive's performance in writing and assign an annual summary rating at the end of the appraisal period.

(1) At a minimum, a senior executive must be appraised on the performance of the critical elements in the performance plan.

(2) Appraisals of senior executive performance must be based on both individual and organizational performance, taking into account such factors as—

(i) Results achieved in accordance with the goals of the Government Performance and Results Act of 1993;

(ii) Customer satisfaction;

(iii) Employee perspectives;

(iv) The effectiveness, productivity, and performance quality of the employees for whom the senior executive is responsible; and

(v) Meeting affirmative action, equal employment opportunity, and diversity goals and complying with the merit system principles set forth under section 2301 of title 5, United States Code.

(b) *Details and job changes.* (1) When a senior executive is detailed or temporarily reassigned for 120 days or longer, the gaining organization must set performance goals and requirements for the detail or temporary assignment. The gaining organization must appraise the senior executive's performance in writing, and this appraisal must be factored into the initial summary rating.

(2) When a senior executive changes jobs or transfers to another agency after completing the minimum appraisal period, the supervisor must appraise the executive's performance in writing before the executive leaves.

(3) The annual summary rating and any subsequent appraisals must be transferred to the gaining agency. The gaining supervisor must consider the rating and appraisals when developing the initial summary rating at the end of the appraisal period.

#### § 430.308 Rating performance.

(a) *Initial summary rating.* The supervisor must develop an initial summary rating of the senior executive's performance, in writing, and share that rating with the senior executive. The senior executive may respond in writing.

(b) *Higher level review.* The senior executive may ask a higher level official to review the initial summary rating before the rating is given to the Performance Review Board (PRB). The senior executive is entitled to one higher level review, unless the agency provides for more than one review level. The higher level official cannot

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change the supervisor's initial summary rating, but may recommend a different rating to the PRB and the appointing authority. Copies of the reviewer's findings and recommendations must be given to the senior executive, the supervisor, and the PRB.

(c) *PRB review.* The initial summary rating, the senior executive's response to the initial rating, and the higher level official's comments must be given to the PRB. The PRB must review the rating and comments from the senior executive and the higher level official, and make recommendations to the appointing authority, as provided in § 430.310.

(d) *Annual summary rating.* The appointing authority must assign the annual summary rating of the senior executive's performance, in writing, after considering any PRB recommendations. This rating is the official rating.

(e) *Extending the appraisal period.* When an agency cannot prepare an annual summary rating at the end of the appraisal period because the senior executive has not completed the minimum appraisal period or for other reasons, the agency must extend the executive's appraisal period. The agency will then prepare the annual summary rating.

(f) *Appeals.* Senior executive performance appraisals and ratings are not appealable.

## § 430.309 Using performance results.

(a) Agencies will use the results of performance appraisals and ratings as a basis for adjusting pay, granting awards, and making other personnel decisions. Performance information will also be a factor in assessing a senior executive's continuing development needs.

(b) A career executive whose annual summary rating is at least fully successful may be given a performance award under part 534, subpart D, of this chapter.

(c) An executive may be removed from the SES for performance reasons, subject to the provisions of part 359, subpart E, of this chapter.

(1) An executive who receives an unsatisfactory annual summary rating must be reassigned or transferred within the Senior Executive Service, or re-

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moved from the Senior Executive Service;

(2) An executive who receives two unsatisfactory annual summary ratings in any 5-year period must be removed from the Senior Executive Service; and

(3) An executive who receives less than a fully successful annual summary rating twice in any 3-year period must be removed from the Senior Executive Service.

## § 430.310 Performance Review Boards (PRBs).

Each agency must establish one or more PRBs to make recommendations to the appointing authority on the performance of its senior executives.

(a) *Membership.* (1) Each PRB must have three or more members who are appointed by the agency head, or by another official or group acting on behalf of the agency head. Agency heads are encouraged to include women, minorities, and people with disabilities on PRBs.

(2) PRB members must be appointed in a way that assures consistency, stability, and objectivity in SES performance appraisal.

(3) When appraising a career appointee's performance or recommending a career appointee for a performance award, more than one-half of the PRB's members must be SES career appointees.

(4) The agency must publish notice of PRB appointments in the FEDERAL REGISTER before service begins.

(b) *Functions.* (1) Each PRB must review and evaluate the initial summary rating, the senior executive's response, and the higher level official's comments on the initial summary rating, and conduct any further review needed to make its recommendations.

(2) The PRB must make a written recommendation to the appointing authority about each senior executive's annual summary rating.

(3) PRB members may not take part in any PRB deliberations involving their own appraisals.

**§ 430.311 Training and evaluation.**

(a) To assure that agency performance management systems are effectively implemented, agencies must provide appropriate information and training to supervisors and senior executives on performance management, including planning and appraising performance.

(b) Agencies must periodically evaluate the effectiveness of their performance management system(s) and implement improvements as needed.

(c) Agencies must maintain all performance-related records for no less than 5 years from the date the annual summary rating is issued, as required in § 293.404(b)(1) of this chapter.

**§ 430.312 OPM review of agency systems.**

(a) Agencies must submit proposed SES performance management systems to OPM for approval.

(b) OPM will review agency systems for compliance with the requirements of law, OPM regulations, and OPM performance management policy.

(c) If OPM finds that an agency system does not meet the requirements and intent of subchapter II of chapter 43 of title 5, United States Code, or of this subpart, it will direct the agency to take corrective action, and the agency must comply.

**Subpart D—Performance Appraisal Certification for Pay Purposes**

SOURCE: 69 FR 45550, 45551, July 29, 2004, unless otherwise noted.

NOTE TO SUBPART D: Regulations identical to this subpart appear at 5 CFR part 1330, subpart D.

**§ 430.401 Purpose.**

(a) This subpart implements 5 U.S.C. 5307(d), as added by section 1322 of the Chief Human Capital Officers Act of 2002 (Title XIII of Public Law 107-296, the Homeland Security Act of 2002; November 25, 2002), which provides a higher aggregate limitation on pay for certain members of the Senior Executive Service (SES) under 5 U.S.C. 5382 and 5383 and employees in senior-level (SL) and scientific or professional (ST) posi-

tions paid under 5 U.S.C. 5376. In addition, this subpart is necessary to administer rates of basic pay for members of the SES under 5 U.S.C. 5382, as amended by section 1125 of the National Defense Authorization Act for Fiscal Year 2004. The regulations in this subpart strengthen the application of pay-for-performance principles to senior executives and senior professionals. Specifically, the statutory provisions authorize an agency to apply a higher maximum rate of basic pay for senior executives (consistent with 5 CFR part 534, subpart D, when effective) and apply a higher aggregate limitation on pay (consistent with 5 CFR part 530, subpart B) to its senior employees, but only after OPM, with OMB concurrence, has certified that the design and application of the agency's appraisal systems for these employees make meaningful distinctions based on relative performance. This subpart establishes the certification criteria and procedures that OPM will apply in considering agency requests for such certification.

(b) Senior executives generally may receive an annual rate of basic pay up to the rate for level III of the Executive Schedule under 5 U.S.C. 5382 and 5 CFR part 534, subpart D, when effective. Senior employees generally may receive total compensation in a calendar year up to the rate for level I of the Executive Schedule under 5 U.S.C. 5307(a) and 5 CFR 530.203(a). Only employees covered by an appraisal system that OPM, with OMB concurrence, certifies under this subpart are eligible for a maximum annual rate of basic pay for senior executives up to the rate for level II of the Executive Schedule (consistent with 5 U.S.C. 5382 and 5 CFR part 534, subpart D, when effective) and a higher aggregate pay limitation equivalent to the total annual compensation payable to the Vice President (consistent with 5 U.S.C. 5307(d) and 5 CFR 530.203(b)).

**§ 430.402 Definitions.**

In this subpart—

*Appraisal system* means the policies, practices, and procedures an agency establishes under 5 U.S.C. chapter 43 and 5 CFR part 430, subparts B and C, or other applicable legal authority, for